

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**ROBERT LEE DELOACH**

**PETITIONER**

**v.**

**NO. 1:05CV23-D-D**

**LAWRENCE KELLY, ET AL.**

**DEFENDANTS**

**ORDER**

Upon consideration of the file and records in this action, including the Report and Recommendation of the United States Magistrate Judge dated November 7, 2005, and the November 21, 2005, objections to the Report and Recommendation by the state, the court finds that the objections shall be overruled and that the Magistrate Judge's Report and Recommendation should be approved and adopted as the opinion of the court. It is, therefore **ORDERED**:

1. That the Report and Recommendation of the United States Magistrate Judge dated November 7, 2005, is hereby approved and adopted as the opinion of the court.
2. That the respondents' August 1, 2005, motion to dismiss for failure to exhaust is hereby **DENIED**.
3. That this proceeding is hereby **STAYED** to provide the petitioner the opportunity to exhaust his unexhausted claims in state court.
4. That the petitioner is hereby directed to file the appropriate motion for post-conviction collateral relief in state court within thirty days of the date of this order.
5. That the petitioner is also directed to file a motion to lift the stay in this action within thirty days of the conclusion of his post-conviction proceeding in state court.

THIS, the 23rd day of March, 2006.

/s/ Glen H. Davidson  
CHIEF JUDGE